Canadian Coalition for
GOOD GOVERNANCE
THE VOICE OF THE SHAREHOLDER

May 28, 2018

Mr. Robert Day
Senior Specialist Business Planning
Ontario Securities Commission
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Toronto, Ontario
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Dear Mr. Day,

Re: Ontario Securities Commission ("OSC") Draft 2018-2019 Statement of Priorities

We thank you for the opportunity to provide you with our comments on the OSC's draft 2018-2019 Statement of Priorities.

CCGG's members are Canadian institutional investors that together manage approximately $4 trillion in assets on behalf of pension fund contributors, mutual fund unit holders, and other institutional and individual investors. CCGG promotes good governance practices in Canadian public companies, as well as the improvement of the regulatory environment to best align the interests of boards and management with those of their shareholders and to promote the efficiency and effectiveness of the Canadian capital markets. A list of our members is attached to this submission.

General

CCGG represents "the voice of the shareholder" and endeavours to ensure that the institutional shareholder perspective is reflected in regulatory initiatives. We therefore appreciate the opportunity to comment on the OSC's draft Statement of Priorities for 2018-2019.

We would first like to recognize the important work that the OSC carries out in furtherance of its five regulatory goals and the progress made in recent years towards achieving the priorities enumerated under those goals. The proposed 2018-2019 priorities include initiatives that are fundamental to meeting the OSC's mandate of protecting investors and fostering fair and efficient capita markets. However, we limit our comments herein to institutional investor issues that are important to our members.

We note, as we did with respect to the OSC's Statement of Priorities for the last two years, that there are several issues, including shareholder democracy matters, of significant importance to CCGG's members which we believe should be high on the OSC's agenda but have not been mentioned or are not included in this year's list of priorities. We would like to continue to remind the OSC of the great importance we place on these matters, which we discuss below.

Gender Diversity

We applaud the OSC for its continued commitment to increasing gender diversity on boards and in senior management and the valuable efforts extended to date in this important area, one that continues to be an area of concern for our members. As the OSC recognised in its most recent staff review of disclosure under the CSA gender diversity requirements, progress remains slow. So, while the proposed 2018-2019 Statement of Priorities states that gender diversity will remain a focus of the OSC in the upcoming year, we encourage the OSC to return gender diversity to its list of priorities for 2018-2019 in order to reflect the importance of this aspect of high – functioning boards. It would be unfortunate to lose any momentum that this issue currently has.

We encourage the OSC to include the adoption of a board gender diversity policy in the best practices guidance found in NP 58-201. We also encourage the OSC to recommend as a best practice that boards adopt within those policies a self-chosen target for the number of women on boards and that progress with respect to that target also be disclosed.

In addition, we believe that section 3.14 of the NP 58-201 guidelines should be amended to state that in making recommendations, nominating committees should consider gender diversity of the board as a whole.

We also believe that the guidelines should be amended to require that board mandates acknowledge a consideration of gender diversity as part of management succession planning.

Review of Disclosure of Oversight of Environmental and Social Sustainability Risks, including Climate Change

In the proposed Statement of Priorities, the OSC states it will continue to monitor, with an eye to the need for a regulatory response, developments on the part of global financial system regulators that are examining the need for companies to disclose exposure to economic, environmental and social sustainability risks, including climate change. CCGG would like to express its support for the OSC's efforts in this area, including its participation in the CSA's climate change-related disclosure project, and encourages the OSC to place a priority on these important elements of governance risk oversight going forward. In the context of the strong global focus on this area, it is important that Canada not be left behind.

As a first step, CCGG recommends that the OSC provide further guidance to the 2010 CSA Staff Notice 51-333 *Environmental Reporting Guidance* to assist issuers in ascertaining which risks factors must be disclosed as 'material' under existing regulation. In particular, shareholders are interested in understanding the connection between the risks and opportunities related to climate change, as well as those related to other environmental and social matters, and the future financial performance of the company. Disclosure as to how these risks and opportunities impact company strategy is key information for shareholders.

Further, CCGG would like to see the OSC require disclosure with respect to:

- Whether companies have frameworks, practices and capabilities in place to identify and manage E&S factors

- Whether E&S factors are fully integrated as part of the risk identification and assessment processes of the enterprise risk management system

- How the board effectively oversees material risks, including material E&S risks

CCGG has prepared a document entitled The Directors' Environmental and Social Guidebook that will be published shortly, and we will forward a copy to the OSC immediately upon its release.

Shareholder Democracy Issues

Say-on-Pay

As was the case last year, we note that the OSC did not include say-on-pay on its list of priorities. We continue to encourage the OSC to keep the issue of mandating say-on-pay under securities regulation on its agenda. CCGG's members believe it is an important issue that the OSC should prioritize and preferably spearhead as the regulator of Canada's primary capital market. As we have repeatedly noted in various submissions to the OSC and other regulators, Canada is an outlier among developed nations in not requiring an advisory say-on-pay vote that allows shareholders to voice their views on the appropriateness of an issuer's executive compensation practices. The benefits of say-on-pay in terms of enhanced issuer/shareholder communication and improved disclosure are broadly acknowledged and it is important that the OSC act to level the playing field so that all issuers and investors in Canada share in these benefits. Leaving say-on-pay as it currently is, a voluntary mechanism for issuers to adopt or not as they wish, has resulted in a plateauing of the number of companies in Canada adopting say-on-pay. CCGG saw minimal response to its 2016 initiative of sending letters to the board and compensation committee chairs of TSX Composite Index companies without say on pay encouraging them to adopt say on pay and thus we believe that further meaningful progress in this area will not occur unless there is regulatory action.

The high levels of approval say-on-pay resolutions typically receive are sometimes cited as evidence that say-on-pay is not really of value or meaningful to shareholders, but it is worth pointing out that issuers that have adopted say- on-pay voluntarily generally tend to be leaders in corporate governance. Significant executive compensation issues are more likely to arise at issuers where governance is less of a priority and it is precisely at these issuers where say-on-pay is most needed.

CCGG does not believe that adopting say-on-pay constitutes an undue additional regulatory burden on issuers. Say-on-pay requires only that a say-on-pay resolution be included in the proxies and information circulars that already must be distributed to shareholders annually and the votes for say-on-pay resolutions would be tallied by issuers in the same manner and at the same time as other annual resolutions put to shareholders.

Majority Voting

With the May 2018 Royal Assent to the federal government's Bill C-25, which will amend the Canada Business Corporations Act ("CBCA") to enable shareholders of companies governed by the CBCA to vote "against" directors rather than the "withhold" vote that is the current option, Canada has finally taken steps towards making true majority voting for uncontested director elections a reality. However, because the CBCA's majority voting standard will apply only to those companies incorporated under the statute, more work remains to be done to ensure that all public shareholders in Canada can meaningfully exercise their right to elect directors. We were happy to see that both former OSC Chair Senator Howard Wetston[1]

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[1] ^Senate Debates, 42nd Pari, 1st Sess, Vol 150, Iss 179 (8 February 2018), online: <https://sencanada.ca/en/content/sen/chamber/421/debates/179db 2018-02-08-e> (Sen. Howard Wetston).

and current OSC Chair Maureen Jensen[2] have publicly expressed their support of the federal initiative with Mr. Wetston going on to say that "My hope is that other provincial corporate statutes will eventually be amended to align with the CBCA. Historically that has been the case.[3] CCGG believes that the provinces and territories should follow the CBCA's lead and we encourage the OSC to work with the federal momentum in this area and publicly lend its voice in support of getting similar majority voting into the laws of the Province of Ontario.

In the meantime, we encourage the OSC to use its influence to have the TSX listing rules on majority voting expanded so that they apply to the approximately 1,600 issuers listed on the TSX–V rather than only to TSX listed issuers. There is no reason to exclude the shareholders of smaller companies from this fundamental shareholder right.

Shareholder Involvement in the Director Nomination Process

CCGG views shareholders' ability to have a meaningful say in which persons are put forward as director nominees to be a fundamental right. CCGG believes[4] that board composition should reflect the input of shareholders and that the director nominating process should incorporate shareholders' views. We believe that not only will this lead to better board quality but also to increasing board diversity.

CCGG further believes that shareholders meeting certain conditions, including having significant shareholdings for a specified time, should be able to nominate directors in proxy materials on an equal footing with management nominees.[5]

We believe that the OSC should make shareholder involvement in the director nomination process, including direct access to the proxy under certain conditions, a priority going forward. Shareholder proposals dealing with what is commonly known as "proxy access" were submitted at two of Canada's largest banks last year, with the proposal at TD Bank receiving 52.2% votes in favour and the proposal at Royal Bank of Canada receiving 46.8% votes in favour. Subsequent to these proposals, the two banks adopted a form of proxy access in September of 2017. Following the lead of RBC and TD, four more Canadian banks have since followed suit, namely, the Bank of Montreal, the Bank of Nova Scotia, the Canadian Imperial Bank of Commerce and the National Bank of Canada. The banks have adopted policies (rather than the bylaws that CCGG prefers), which allow investors with a 5% holding to nominate directors on their proxy based on their view that the Bank Act currently prohibits a 3% threshold. TD and RBC are advocating that the Bank Act be amended to permit a 3% threshold at which point they have committed to adopting a 3% threshold, which is consistent with CCGG's *Proxy Access Policy*.

CCGG also hopes to see securities laws changed so that shareholder proponents of proxy access can use the company's proxy circular to solicit votes in favour of the proponents' nominee(s). Currently, proxy solicitation rules restrict shareholders to communicating with a maximum of 15 shareholders unless they prepare a dissident proxy circular. CCGG's view is that shareholders who nominate a director should not

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[2] Closing Remarks by Maureen Jensen, Chair and CEO, Ontario Securities Commission, Shareholder Rights Conference, University of Toronto October 28, 2016

[3] ^Senate Debates, 42nd Pari, 1st Sess, Vol 150, Iss 179 (8 February 2018), online: <https://sencanada.ca/en/content/sen/chamber/421/debates/179db 2018-02-08-e> (Sen. Howard Wetston).

[4] See CCGG's *Shareholder Involvement in the Director Nomination Process: Enhanced Engagement and Proxy Access*,[October 2015]

[5] See our document referred to in footnote 4 for further details

only be permitted to have their nominees included on a universal form of proxy but also should be able to use the management proxy circular as their own proxy circular for purposes of soliciting support for their nominees. Accordingly, securities law would have to be amended to accommodate this right.

With proxy access now part of the Canadian corporate governance landscape, it is important that the OSC bring its voice to this discussion.

Universal Proxies

We also recommend that the OSC adopt rules that would require the use of a 'universal proxy' in all contested director elections.[6] All director nominees in this situation should be included in a fair manner on the same proxy form whether nominated by management or by dissidents so that shareholders are able to freely choose the combination of nominees they wish to support, just as they are able to do if they attend the shareholder meeting in person.

Empty Voting

We also would like to see an acknowledgement that the OSC is considering the issue of empty voting. As CCGG notes in its 2017 Empty Voting Position Statement[7], the separation of voting interests from economic interests calls into question some of the fundamental assumptions of shareholder democracy upon which our system of corporate governance is based and we believe the OSC should turn its attention to this issue.

We thank you again for the opportunity to provide you with our comments. Please feel free to contact our Executive Director, Stephen Erlichman (416-847-0524 or serlichman@ccgg.ca) or our Director of Policy Development, Catherine McCall (416-868-3582 or cmccall@ccgg.ca) if you would like to discuss the matters in this letter further or if we can be of any assistance.

Yours truly,

CMcCall per Julie Cays

Julie Cays, CFA
Chair of the Board
Canadian Coalition for Good Governance

[6] See CCGG's Universal Proxy Policy, September 2015
[7] Empty Voting Position Statement, September 2017, CCGG

CCGG Members – June 2018

Alberta Investment Management Corporation (AIMCo)
Alberta Teachers' Retirement Fund (ATRF)
Archdiocese of Toronto
BlackRock Asset Management Canada Limited
BMO Asset Management Inc.
BNY Mellon Asset Management Canada Ltd.
Burgundy Asset Management Ltd.
Caisse de dépot et placement du Québec
Canada Pension Plan Investment Board (CPPIB)
Canada Post Corporation Registered Pension Plan
CIBC Asset Management Inc.
Colleges of Applied Arts and Technology Pension Plan (CAAT)
Connor, Clark & Lunn Investment Management Ltd.
Desjardins Global Asset Management
Fiera Capital Corporation
Franklin Templeton Investments Corp.
Galibier Capital Management Ltd.
Greystone Managed Investments Inc.
Healthcare of Ontario Pension Plan (HOOPP)
Hillsdale Investment Management Inc.
Investment Management Corporation of Ontario (IMCO)
Industrial Alliance Investment Management Inc.
Jarislowsky Fraser Limited
Leith Wheeler Investment Counsel
Lincluden Investment Management Limited
Mackenzie Financial Corporation
Manulife Asset Management Limited
NAV Canada
Northwest & Ethical Investments L.P. (NEI Investments)
Ontario Municipal Employee Retirement System (OMERS)
Ontario Teachers' Pension Plan (OTPP)
OPSEU Pension Trust
PCJ Investment Counsel Ltd.
Pension Plan of the United Church of Canada Pension Fund
Pier 21 Asset Management Inc.
Public Sector Pension Investment Board (PSP Investments)
QV Investors Inc.
RBC Global Asset Management Inc.
Régimes de retraite de la Société de transport de Montréal (STM)
Scotia Global Asset Management
Sionna Investment Managers Inc.
State Street Global Advisors, Ltd. (SSgA)
Sun Life Institutional Investments (Canada) Inc.

TD Asset Management Inc.
Teachers' Retirement Allowances Fund
UBC Investment Management Trust Inc.
University of Toronto Asset Management Corporation
Vestcor Inc.
Workers' Compensation Board - Alberta
York University